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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/379,704	08/24/1999	ROBERT P. BURKE	BOBBURK.003A	1615

7590 12/17/2003

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NEWPORT BEACH, CA 92660

EXAMINER
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TRAN, KHOA H

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 12/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Office Action Summary**

Application No.

09/379,704

Applicant(s)

BURKE, ROBERT P.

Examiner

Khoi Tran

Art Unit

3634

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 November 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3 and 41-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3 and 41-44 is/are allowed.
- 6) ☒ Claim(s) 45-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All   b) ☐ Some \* c) ☐ None of:  
 1. ☐ Certified copies of the priority documents have been received.  
 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
 a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 45-52 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With respect to claim 45, on page 5, line 4, there is no antecedent basis for "said second thickness".

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 45-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hawkinson et al. ('869) in view of Johnson et al. ('690). Hawkinson et al. ('869) disclose a pusher block and a track in combination comprising a pair of generally T-shaped rails, each rail having a product surface (22), a bottom surface, an outside edge surface and an inside edge surface (20) that extends below the product surface and between the outside edge surfaces. The track further has a pusher block (18) having outside flanges wrap around the outside edge surfaces of the product support surface and engage a portion of the bottom surfaces, see Figure 4. The respective rail thickness is defined between the product support surface and the bottom surface.

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Hawkinson et al. ('869) do not teach the pusher block having a pair of lower extended arms /inside flanges. However, Johnson et al. ('690) teach the provision of a pair of lower extended arms/inside flanges (56a and 56b) on a pusher block (12), see Figure 3, such that the respective lower extended arm/inside flange is spaced from an outside flange (54a) by a distance greater than twice the thickness of a product surface (30a). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the pusher block of Hawkinson et al. ('869) with a pair of spaced apart lower extended arms/inside flanges as taught by Johnson et al. ('690) in order to provide a locking means at a selected depth and to secure the pusher block under the inside edge surface to prevent the pusher block from separated with the track. See column 1, lines 30-31.

### ***Allowance***

The following is an examiner's statement of reasons for allowance:

Claims 3 and 41-44 are allowed over the prior art of record because none of the prior art of record teaches or suggests a pusher block and track in combination comprising first and second raised rails that are extended parallel with each other, each rail has a product supporting surface, a bottom surface, an outside edge surface, an inside edge surface, wherein the respective outside edge surfaces and the inside edge surfaces are extended between the respective product supporting surfaces and the bottom surfaces of the raised rails, a pusher block comprising a sliding surface that slides along the respective product supporting surfaces of the raised rails, the pusher

block having first and second outside flanges that are disposed on each side of the pusher block and adapted to wrap around the respective outside edge surfaces and a portion of the respective bottom surfaces of the raised rails, the pusher block has a T-shaped boss and first and second arms that are extended below the respective sliding surfaces and wherein the pusher block covers at least a portion of the respective product supporting surfaces, and respective outside and inside edge surfaces and respective bottom surfaces of the respective raised rails.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Response to Amendment***

Applicant's remarks with respect to claims 45-52 have been considered but are moot in view of the new grounds of rejection.

The new grounds of rejection were necessitated by applicant's amendment, e.g., the deletion of "a first rail thickness being defined between the first top surface and the first bottom surface", "a second rail thickness being defined between the second top surface and the second bottom surface", and "said sliding surface and said first inside flange being spaced apart by a distance less than twice the first thickness". See claim 45.

With respect to applicant's remarks to the drawings objection is found to be persuasive and the previous drawings objection has been withdrawn.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa Tran whose telephone number is (703) 306-3437. The examiner can normally be reached on Monday through Thursday from 9:30 A.M. to 7:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola, can be reached on (703) 308-2686. The fax phone number for this Group before a final Office action is (703) 872-9326 and after a final Office action is (703) 872-9327.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

Khoa Tran  
December 12, 2003

A handwritten signature in black ink that reads "Daniel P. Stodola". The signature is written in a cursive style with a large, looped initial "D".

DANIEL P. STODOLA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600